

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CESAR A. BARTUREN, RAYMUNDO LARA
MOLINA, MIGUEL EDUARDO TABARA,
MARCO ANTONIO CORONA, JUAN CARLOS
MOLINA, JULIO CESAR MORENO GONZALEZ
PEDRO HERNANDEZ HERNANDEZ, JULIO
ANTONIO, JULIO CARBONEL, EUSEBIO SANTOS
FEROSQUILLO, JASON BORGES, LINO MARTINEZ,
JUAN JOSE PENA FARFAN, JOSE FERNANDEZ,
AND JORGE LEGIS CUYATE CARMONA,
on behalf of themselves and all other employees
similarly situated as class and collective representatives,
Plaintiffs,

AFFIDAVIT

07-CV-8127

-against-

WILD EDIBLES, INC, 535 THIRD AVENUE, LLC
d/b/a WILD EDIBLES, RICHARD MARTIN
AND JONATHAN MEYER,
Defendants.

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STATE OF NEW YORK }
 } S.S.
COUNTY OF QUEENS)

RICHARD RICE, being duly sworn, deposes and states:

1. I am employed by Wild Edibles, Inc. as the night manager of the warehouse located at 21-51 Borden Avenue. I work a shift from 10 p.m. to 7:00 a.m. From 10:00 p.m. until 2 a.m. I do data entry in the office. I supervise the warehouse employees from the beginning of the shift at 2:00 a.m. until I leave.

2. The warehouse employees prepare, pick and pack orders for our customers. Not all jobs are interchangeable, however. Certain jobs require greater skills and experience such as fillet men and tuna cutters who prepare the fresh seafood to customer specifications, and oyster and freezer pickers who must be able to distinguish among numerous types and qualities of product in filling an order.

3. At the beginning of each night it is critical that we know which employees will be at work in order to get all the work done. Employees who are scheduled to be at work but cannot come in are required to call the office in advance and notify us in order that we may make other arrangements if necessary. The first thing I do when I get to the office is to check my e-mails for orders. The next thing I do is to check the voice messages to see if anyone has called in to say they will not be in. Luis Carbonel, who we call "Lucho", is the leadman in the warehouse. When Lucho arrives I confer with him to tell him of any absences. When an employee calls Lucho directly, as sometimes happens, he contacts me and gives me that information. Similarly, we advise each other when an employee does not show for work and has not called to tell us. We reassign employees as needed and if possible to ensure that all the work needed to be completed is completed.

4. Lino Martinez worked in the warehouse picking and packing oyster orders. On September 25th he came to work, punched in and began working. Carlos Molina, who also worked with oysters, was a "no call -no show" that night. I told Lucho about this and we assigned Miguel Tavera, who we all call "Lallo", to work with Lino to complete the oyster orders.

5. Later that shift, at approximately 5:15 Lallo came to me and said "Lino go home". He did not tell me why. I checked and saw that Lino had indeed left his job. Lino never asked my permission to leave, nor did anyone else on his behalf. I absolutely did not give Lino permission to leave that night. I understood his action to mean that he quit.

6. The next night I was in Robert Blair's office near the start of the shift when Lino walked in to punch in for the night. I said to him "I don't know why you are here, you quit last night". He just shrugged. I asked another employee, Carlos Molina, to translate what I was saying. After Molina spoke Lino, shrugged and said "no problem" and left the

office. Lino did not give any explanation why he left the night before. He did not say that he was sick or that he hurt his back. He looked in perfect health to me.

7 About an hour later Lucho told me there was someone to see me, and I saw a fire department paramedic unit in front of the warehouse. The paramedic asked who called, I said I did not know. While we were talking Lino came out from the employee locker room. I did not know he was in there, as I thought he left the building. He started speaking but neither I nor the paramedic could understand him. He left with the paramedic

8. I have never tried to harass or harm Lino or any employee by using the blowers in the coolers. The blowers are fixed units, and cannot be redirected. They are the same in every cooler. Lino has done this work for years without complaint or injury.

9. Jose Fernandez worked in the warehouse as a tuna cutter and fillet man. He did not come to work that night and he did not call to inform us of his absence. I did not receive a call from him, and no messages were left in the office voicemail. Lucho told me that Jose had not called him either.

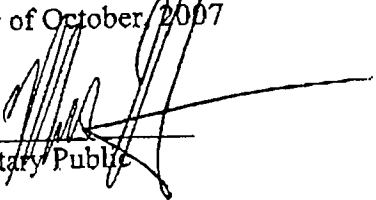
10 On my way to the tuna cooler to get the orders to be filled that night I met Jose's brother, Lallo. I asked him what happened to his brother. Lallo said he did not know, that he was late that night because he knocked on Jose's door but Jose did not answer.

11. Jose never called me after that to explain why did not come to work that night.

12. Raul Lara Molina was scheduled to work on August 29th. I checked the messages that night and Raul had not called to say he would not be in. I checked with Lucho who told me that Raul had not called him. He did not come in that night. I told Rich Martin the next day that Raul was a "no call-no show".


RICHARD RICE

Sworn to before me this 18th
day of October, 2007


Notary Public

MATTHEW HOVEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HO6174818
Qualified in Queens County
My Commission Expires September 24, 2011